

STATE OF MICHIGAN  
COURT OF APPEALS

---

GINA PLACIDO,

Plaintiff-Appellant,

V

JAMES RAMBERGER,

Defendant-Appellee,

and

HARPER WOODS POLICE DEPARTMENT,

Defendant.

---

UNPUBLISHED

August 10, 2001

No. 221507

Wayne Circuit Court

LC No. 97-741294-CZ

Before: Jansen, P.J., and Collins and Cooper, JJ.

PER CURIAM.

This appeal involves plaintiff's claims against defendant-appellee, a police officer with the Harper Woods Police Department, for assault and battery, violation of her civil rights under 42 USC 1983, and gross negligence. A judgment of no cause of action was entered by the trial court following a jury's findings, by special verdict, that defendant-appellee did not assault or batter plaintiff. The jury also found that there was no infringement of plaintiff's civil rights or that defendant's treatment of plaintiff amounted to gross negligence. Plaintiff appeals as of right. We affirm.

Plaintiff first asserts that defendant-appellee introduced medical records from Bon Secours Hospital and St. John's Hospital on her drug abuse history. However, we find no factual basis in the record for this assertion and do not consider this claimed evidence. A party may not leave it to this Court to search for a factual basis to sustain or reject a position. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998).

We have considered plaintiff's evidentiary claim in the context of the trial court's ruling on the videotape deposition of Dr. Fanny dela Cruz, which was introduced by plaintiff at trial. However, we are not persuaded that the trial court's ruling to allow evidence of the cross-examination conducted by defendant-appellee's attorney regarding plaintiff's prior drug use was an abuse of discretion. MRE 611(b); *Wischmeyer v Schanz*, 449 Mich 469, 474; 536 NW2d 760

(1995); *Kalamazoo Oil Co v Boerman*, 242 Mich App 75, 78; 618 NW2d 66 (2000). Rather, the cross-examination was relevant to plaintiff's damages claim. MRE 401; *People v Brooks*, 453 Mich 511, 517-518; 557 NW2d 106 (1996). The doctor testified that plaintiff's prior drug use would have a significant effect on the types of procedures that could be performed on the plaintiff during the proposed surgery. Further, it was plaintiff's attorney who violated the trial court's instruction not to mention plaintiff's prior drug use during the parties' opening statement by declaring in his opening statement that the jury would hear evidence regarding plaintiff's past problems with drugs during the course of the trial.

We also reject plaintiff's claim that the evidence should have been excluded under MRE 403 on the basis of unfair prejudice. *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909 (1995), mod on other grounds 450 Mich 1212 (1995). "An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there is no justification or excuse for the ruling made." *Roulston v Tendercare, Inc*, 239 Mich App 270, 282; 608 NW2d 525 (2000). Any perceived prejudice in the case at bar could have been cured by requesting a limiting instruction. MRE 105; see also *Lopez v General Motors Corp*, 224 Mich App 618, 635; 569 NW2d 861 (1997).

Next, concerning plaintiff's challenge to evidence on her marijuana possession, we find that plaintiff's failure to brief the specific trial evidence that she claims should have been excluded precludes appellate review. *Great Lakes, supra* at 424. To the extent that plaintiff's claim may be based on the booking officer's testimony that marijuana was found in her purse during the booking process, plaintiff has not established a basis for relief.

In this regard, we note that the trial court's ruling denying plaintiff's motion in limine, and allowing evidence on plaintiff's marijuana possession for purposes of impeachment, is somewhat unclear standing alone. However, immediately after this ruling, the trial court was called upon to rule on whether other evidence of plaintiff's conduct; namely, her assault of the store manager before defendant-appellee's arrival, could be admitted. The trial court found, within this context, that evidence of plaintiff's conduct would be admissible because it was probative of the defense that plaintiff resisted arrest and was part of the incident that gave rise to the charges against defendant. We conclude that the trial court's "impeachment" ruling, while unclear, does not warrant relief because there was in fact a legitimate basis for the evidence. MRE 103(a); MCR 2.613(A).

Next, plaintiff claims that evidence of her "conviction" for assault and battery was improperly admitted. We find plaintiff's reliance on MRE 609 misplaced, given her failure to show that evidence on a conviction for assault and battery was offered by defendant-appellee or admitted by the trial court to attack her general credibility. See *People v Douglas Taylor*, 422 Mich 407, 414; 373 NW2d 579 (1985).

Plaintiff also challenges the scope of cross-examination allowed by the trial court of witness Jeffrey Curle concerning his prior arrests and an investigation conducted by the Harper Woods Police Department where defendant-appellee was employed. Specifically, plaintiff alleges that this testimony was improperly used to impeach Mr. Curle. However, plaintiff has failed to show that the trial court's ruling was an abuse of discretion. MRE 611(b); *Wischmeyer*,

*supra* at 474. Prior arrests used to bring out a witness' bias are admissible. *People v Layher*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 116315, issued 3/7/2001), slip op at 2, 9. The "interest or bias of a witnesses or his relationship toward the parties to an action is a proper factor to consider on the issue of credibility." *People v Johnson*, 174 Mich App 108, 112; 435 NW2d 465 (1989). Nonetheless, we believe that any error would have been harmless because the testimony concerning Mr. Curle's prior arrests and investigation neither prejudiced plaintiff or denied her substantial justice. MRE 103(a); MCR 2.613(A); *Merrow v Bofferding*, 458 Mich 617, 634; 581 NW2d 296 (1998).

Plaintiff next questions the admissibility of testimony by two of defendant-appellee's fellow police officers. First, we find plaintiff's reliance on the trial court's earlier ruling concerning her motion in limine on expert testimony misplaced for the purpose of challenging testimony of Sergeant Miglio and Lieutenant Manor. The record reflects that the motion in limine pertained solely to a proposed defense expert, John Israel, who did not testify at trial.

Furthermore, there is no merit to plaintiff's claim that Sergeant Miglio's testimony was lay opinion testimony in conflict with MRE 701. Plaintiff's brief focuses on the scope of the testimony regarding the proper use of force during an arrest. Plaintiff claims that such opinion testimony was inappropriate because the sole issue was the intentional banging of petitioner's head against the side of the car. However, plaintiff's three counts plainly go beyond the issue of whether plaintiff's nose was intentionally broken and include the issue of whether excessive force was used. MRE 701 provides that:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Sergeant Miglio testified that he did not see defendant harm anyone during the situation at the Farmer Jack's store. We find that this testimony was based on Sergeant Miglio's perceptions and was helpful to a clearer understanding of his testimony or the determination of an issue of fact. See *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 455-456; 540 NW2d 696 (1995).

We further disagree that the admission of Lieutenant Manor's testimony concerning the results of his investigation of plaintiff's citizen complaint was reversible error. Even if the results of his investigation were inadmissible as opinion testimony, reversal is not warranted. Giving due consideration to the entire record, including the fact that plaintiff herself introduced evidence regarding her citizen's complaint, we hold that plaintiff's substantial rights were not affected by the cited testimony. MRE 103(a). Furthermore, substantial justice does not mandate our reversal of this decision. MCR 2.613(A); *Krohn v Sedgwick James of Michigan, Inc*, 244 Mich App 289, 295; 624 NW2d 212 (2001).

Finally, plaintiff challenges the admissibility of the videotape of her booking at the police station. We conclude that plaintiff has not shown that the trial court abused its discretion in admitting the videotape over her objection that it lacked relevancy. MRE 401; *Kalamazoo Oil Co, supra* at 78. Indeed, the tape was relevant because it showed her condition at the time of arrest. Further, plaintiff failed to preserve her additional claim for appellate review, that the

videotape should have been excluded under MRE 403, by making an objection on that ground before the trial court. *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997).

Affirmed.

/s/ Kathleen Jansen  
/s/ Jeffrey G. Collins  
/s/ Jessica R. Cooper